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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8
9 THOMAS J. HOPKINS,

10 Plaintiff,

No. C11-833Z

11 v.

ORDER

12 PHILLIP ALDEN TAVEL, et al.,

13 Defendants.

14 THIS MATTER comes before the Court on the Report and Recommendation
15 (“R&R”) of Magistrate Judge Brian A. Tsuchida, docket no. 10, in response to which
16 plaintiff has filed a motion for leave to amend complaint, docket no. 11. Plaintiff sues his
17 criminal defense attorney (Phillip Alden Tavel) and an unnamed employee of the King
18 County Office of the Public Defender (“OPD”) for alleged deficiencies in the legal
19 representation afforded to him to date in a pending prosecution. As the R&R explains,
20 plaintiff may not bring suit against Mr. Tavel under 42 U.S.C. § 1983 because a “public
21 defender does not act under color of state law when performing a lawyer’s traditional
22 functions as counsel to a defendant in a criminal proceeding.” *Polk County v. Dodson*,
23 454 U.S. 312, 325 (1981). Plaintiff’s assertion to the contrary, in his motion for leave to
24 amend complaint, is not supported by the authorities he cites.

25 The R&R further indicates that plaintiff’s complaint fails to allege how the unnamed
26 OPD employee personally participated in causing harm to plaintiff. In response, plaintiff has

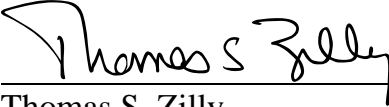
1 submitted, as an attachment to his motion for leave to amend complaint, a copy of a letter he
2 received from OPD's Client Complaint Services stating that his concerns had been relayed to
3 Mr. Tavel, along with a request that Mr. Tavel contact plaintiff. Such letter does not
4 evidence a constitutional tort actionable under § 1983.

5 Plaintiff has been advised of the defects in his complaint, and his motion for leave to
6 amend complaint identifies no facts that might cure such deficiencies. *See Lucas v. Dep't of*
7 *Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) ("Unless . . . no amendment can cure the defect . . . ,
8 a pro se litigant is entitled to notice of the complaint's deficiencies and an opportunity to
9 amend prior to dismissal of the action."). The doctrine of liberal pleading amendment does
10 not require the Court to permit plaintiff to abandon the unjustifiable claims he has asserted in
11 favor of entirely different and potentially cognizable claims, and the Court therefore DENIES
12 plaintiff's futile motion for leave to amend, docket no. 11, ADOPTS the R&R in part,¹
13 STRIKES as moot plaintiff's request for issuance of summons, docket no. 6, and motion for
14 production of documents, docket no. 7, and DISMISSES this case without prejudice.

15 IT IS SO ORDERED.

16 The Clerk is directed to send a copy of this Order to plaintiff pro se and Magistrate
17 Judge Tsuchida.

18 DATED this 30th day of June, 2011.

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20 
21 Thomas S. Zilly
22 United States District Judge
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26 ¹ The R&R suggests that the Court abstain from entertaining this action pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). The Court DECLINES to adopt this portion of the R&R.